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ABSTRACT

The rise of parental responsibility statutes creates tension between the state's duty to respect the integrity of the family and the duty to protect children and the best interests of society. Yet, there is an ever-growing belief that something must be done to reverse the trend of juvenile crime. Parental responsibility laws have emerged as an answer; statutes that impose a penalty for contributing to the delinquency of a child now exists in 42 states. South Dakota's statutes regarding contributing to delinquency and truancy are examined. Although state parental responsibility laws vary greatly, they share the goal of reducing juvenile delinquency by making parents responsible for their children's actions. Often overlooked is the inadequate housing, poor health care, substandard educational opportunities, and other material and emotional deficiencies that may underlie the delinquency. In these circumstances, imprisonment may mean breaking up the family and reducing stability, and fines may mean taking money that would have been available for the sustenance of the child and family. (TS)

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PARENTAL RESPONSIBILITY FOR JUVENILE CRIME: SOLUTION OR FAILURE?

The increasing juvenile delinquency rate has prompted legislative action to require parents to act more responsibly in their child-rearing practices. Various forms of parental responsibility laws have been enacted to deal with the juvenile delinquency situation that is viewed as out of control and undaunted by the established juvenile justice system. There are generally three forms of parental punishment for acts of their children or wards: (1) contributing to delinquency statutes, (2) parental liability statutes (civil liability), and (3) misdemeanor criminal statutes.

Contributing to Delinquency Statutes

Statutes that impose a penalty for contributing to the delinquency of a child first developed in Colorado in 1903. Now such statutes exist in forty-two states, including South Dakota, and the District of Columbia. Contributing to delinquency statutes generally relate to activities of a parent, guardian, or other adult person that willfully encourages a minor's delinquent behavior, and the crime is usually a misdemeanor. South Dakota's statute regarding contributing to delinquency is as follows:

> § 26-9-1. Contributing to abuse, neglect or delinquency or causing child to become child in need of supervision as misdemeanor.
>
> Any person who, by any act, causes, encourages or contributes to the abuse, the neglect or the delinquency of a child, or any person, other than a parent who, by any act, causes a child to become a child in need of supervision, as such phrases with reference to children are defined by chapters 26-7A, 26-8A, 26-8B and 26-8C, or who is, in any manner, responsible therefor, is guilty of a Class 1 misdemeanor.

The first part of this statute contains the contributing to delinquency language that is typical of many such statutes. The latter part of South Dakota's statute includes language regarding children in need of supervision.

Parental Liability Statutes

Until the 1950s, only in Hawaii[1] and Louisiana[2] could a victim recover from parents of underage offenders. Hawaii's law, enacted in 1846, is far-reaching in that it does not set a financial limit of recovery, and it imposes parental responsibility for negligent as well as intentional acts. Hawaii and Louisiana laws are in line with Europe, Central and South America, Quebec, and Puerto Rico. This may reflect a cultural emphasis on family solidarity compared to the individualism of Anglo-American common law.

At common law, there is no liability without fault and no recovery from parents for damages done intentionally by children unless (1) a parent directly or subsequently ratified the act, (2) the child was acting as the parent's agent or servant, (3) the child was entrusted with a dangerous instrumentality, such as a gun, or (4) the parent's negligence was a proximate cause of

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the harm. In the 1950s states started enacting statutes similar to Hawaii and Louisiana to overcome barriers of common law. Today all states but New Hampshire have these laws. Slightly more than half of the states permit recovery for property damage and personal injury; the rest permit recovery for only property damage. Part of the goal is to place the burden of the loss on the parent of the person who is responsible for the wrong rather than on the victim. Also, civil liability is intended to control juvenile delinquency by making parents partially responsible for the criminal and civil conduct of their children.

Early statutes placed no limits on recovery. Today limits of recovery range in amounts up to fifteen thousand dollars as in Texas[3] with the average about two thousand five hundred dollars. In South Dakota, the limit on recovery is one thousand five hundred dollars as indicated in the statute that follows:

> § 25-5-15. Parental liability for willful acts of child - Limitation of recovery - Motor vehicle cases excepted - Specific findings in disputed cases.
>
> Any person, firm, association, private or public corporation, including the State of South Dakota and its political subdivisions, suffering damages to real, personal or mixed property, or personal injury, through the malicious and willful act or acts of a minor child or children under the age of eighteen years while residing with their parents, shall have therefor a cause of action against and recover of the parents of such child or children. In each case the amount of recovery against one or both of the parents shall be limited to actual damages of fifteen hundred dollars and the taxable court costs, and does not apply to damages proximately caused through the operation of a motor vehicle by the minor child or children. If the issue is disputed, any determination that a parent is not responsible for the full amount of actual damages and costs authorized by this section shall be justified in a specific finding, in writing or on the record.

These statutes were enacted essentially because children own no real property and therefore are judgment proof. Several laws imposing strict vicarious liability upon parents for damage caused by willful misconduct of children have been held constitutional.

Misdemeanor Criminal Sanctions

California's Street Terrorism Enforcement and Prevention Act[4] allows parents to be arrested if their child becomes a suspect in a crime and they have knowingly failed to control or supervise their child. The maximum sentence is a year in jail and a two thousand five hundred dollar fine. Prior to 1988, the statute held persons accountable for acts or omissions that "caused, encouraged, or contributed to" the dependency or delinquency of a minor. The 1988 amendment imposes an additional, affirmative duty on parents and guardians "to exercise reasonable care, supervision, protection and control" over their children. A Loyola University School of Law professor and the American Civil Liberties Union filed a taxpayers' lawsuit claiming that the statute infringed on privacy rights in family matters, is impermissibly vague and over broad, and if enforced, would constitute a waste of public funds. The California Supreme Court upheld the constitutionality of the parental responsibility law.

A 1990 Florida statute subjects parents to a five-year prison term and five thousand dollar fine if their child uses a gun that has been left in the house.[5] This type of liability law, also known as safe storage, adult liability for children's access to firearms, or criminally negligent storage, has been enacted in a number of states over the objections of those who believe gun owners' rights are being eroded. Florida was the first to enact laws holding adults liable for children's access to firearms and did so in response to a rash of fatal juvenile gun

accidents. The Florida law requires safe storage of all firearms and holds adults liable if children gain access to unsecured weapons. The definition of safe storage may include (1) use of trigger locking device, (2) storage in a locked container, (3) storage of ammunition separate from the firearm, and (4) removal of an essential component of the firing mechanism. In the various states that have enacted such laws, the measures vary from felony to misdemeanor offenses with penalties including fines and possible imprisonment. In each state the adult is not liable if access is gained through unlawful entry.

Miscellaneous Provisions

Hawaii and Wisconsin have statutes that force parents to pay child support when their minor children have babies. Hawaii's law provides that when a parent of a child is a minor, unmarried, and not able to provide full support, the court may order one or both parents of the minor to support the child until the minor reaches majority or is financially able to support the child.[6] Wisconsin's law is similar but also holds grandparents responsible for offspring of their children.[7] The law provides for possible fines up to ten thousand dollars and a possible two-year jail term. Although it was expected to prevent juvenile pregnancy, it was repealed because of legislative concern that provisions might have a negative effect on parent-teen relations and as a result of parental pressure might lead to higher rate of abortion and lower rate of establishing paternity. Most recently in South Dakota, House Bill 1222 was introduced to specify that parents of a minor with a child may be required to support the child in certain circumstances, but included no penalty for noncompliance. The bill failed to pass the House of Representatives.

Some states use parental responsibility statutes to hold parents responsible for a child's truant behavior, frequently under compulsory attendance laws. In Indiana parents face up to four years in prison and fines up to five thousand dollars if they are aware of their child's unexcused absences from school. Those unaware can be charged with a misdemeanor with a maximum sentence of six months in jail and a one thousand dollar fine.[8] South Dakota has a truancy statute which, if violated, is a misdemeanor. The text is as follows:

> § 13-27-11. Failure to send child to school as misdemeanor.
>
> Any person having control of a child of compulsory school age who fails to have the child attend school as required by the provisions of this title, is guilty of a Class 2 misdemeanor for the first offense. For each subsequent offense, a violator of this section is guilty of a Class 1 misdemeanor.

Legal Considerations

To withstand constitutional scrutiny, parental liability laws must meet the following minimum requirements. First, the law must be rational. Parental responsibility laws rest on the legal presumption that the child's delinquent behavior is a result of poor parenting. Sociological studies show that peers and social institutions usually play a larger role than parents in fostering juvenile behavior, but courts often sidestep this problem by finding that the possibility that the statutes might aid in controlling juvenile behavior satisfies the rational basis requirement. Secondly, the law cannot be so vague that is fails to provide notice of what is prohibited and to allow for arbitrary and discriminatory enforcement; that is, the law may not delegate policy to police and judges and juries for resolution on a subjective basis. Finally, the law must be narrowly drafted to avoid over inclusiveness which may be an infringement on the parent-child relationship. Parental responsibility statutes depart significantly from the deference that

legislatures have traditionally afforded parents.

In addition to constitutional considerations, adherence to criminal law principles must also be considered. The criminal elements--a criminal act, criminal intent, concurrence of act and intent, causation, and harm--must be present or there must be an exception that renders one or more of them unnecessary. Sometimes there may be a desire to hold citizens strictly liable for certain consequences of their conduct, thus eliminating the criminal intent and concurrence requirements. However, an act or omission is always required because punishment cannot be imposed for bad thoughts. The difficulty with parental responsibility laws is that rather than punishing a parent for overt conduct like abuse, the law punishes for passive conduct, that is, failing to supervise or protect the child.

Pros and Cons

Those in favor of parental responsibility laws use the following arguments to support their opinion. Parental responsibility laws place the burden of the loss on the parent of the person who is responsible for the wrong rather than on the victim. The laws are a legitimate means of restitution to victims of juvenile crime and of punishing parents for neglecting child-rearing responsibilities. The laws are intended to control juvenile delinquency by making parents pay, providing an incentive to make parents keep their children in line.

Opponents of parental responsibility laws assert the following contentions. There is no conclusive evidence but preliminary evidence indicates that the delinquency rate is not significantly affected by delinquency statutes that punish parents. Parental responsibility can rarely be isolated and found to be the definitive cause of a child's criminality. Rather, it is more likely one of many interrelated factors affecting a child's behavior. Others are socio-economic status, educational level, urbanization, living conditions, and social instability.

Conclusion

The rise of parental responsibility statutes creates tension between the state's duty to respect the integrity of the family and the duty to protect children and the best interests of society. Yet, there is an ever-growing belief that something must be done to reverse the trend of juvenile crime. Parental responsibility laws have emerged as an answer. Although the laws vary greatly, they share the goal of reducing juvenile delinquency by making parents responsible for their children's actions. Often overlooked is the inadequate housing, poor health care, substandard educational opportunities, and other material and emotional deficiencies that may underlie the delinquency. In these circumstances, imprisonment may mean breaking up the family and reducing stability, and fines may mean taking money that would have been available for the sustenance of the child and family. Whether viewed as a solution or a failure, parental responsibility laws are one response to rising juvenile delinquency.

This issue memorandum was written by Jacque Storm, Senior Legislative Attorney for the Legislative Research Council. It is designed to supply background information on the subject and is not a policy statement made by the Legislative Research Council.

Endnotes

1. H.R.S. § 577-3.

2. L.S.A.-C.C. art. 2318.

3. V.T.C.A. Fam.C. §§33.01 and 33.02.

4. CA Pen.C. §272.

5. F.S.A. §784.05.

6. H.R.S. §584-15.

7. W.S.A. §948.22.

8. B.I.S.A. §31-6-4-3.